



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/14064/2014

THE IMMIGRATION ACTS

Heard at Field House
On 20 November 2014

Determination Promulgated
On 01 December 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE MCWILLIAM

Between

MR SHAHID ALI
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Kansal, Counsel instructed by Nasim & Co
For the Respondent: Mr S Walker, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Pakistan and his date of birth is 12 November 1984.
2. The appellant made an application for leave to remain as a Tier 1 (Entrepreneur) Migrant under the points-based system on 21 October 2013. The Secretary of State refused the application on 6 March 2014. The Secretary of State concluded that it was not credible that the appellant had £50,000 in order to invest. It was conceded that his personal bank statement showed that he had the requisite funds, but not that the funds were from the appellant's savings as he stated in his interview in the light of

the appellant's income. The decision maker referred to another application in the same category from Mr Muhammad Mubbshar of the same address as the appellant. With his application he submitted a letter from the appellant stating that he would invest £50,000 into Mr Mubbshar's business.

3. The Secretary of State did not accept the viability of the appellant's business plan because it was heavily based on business plans found on a general website. It was noted that the appellant stated in his interview that he had his own website, but it has the same wording and design of the website of another named book-keeping company.
4. The Secretary of State concluded that the appellant had no clear idea of how the business will operate and in relation to market research his answers were poor and lacking in detail. In addition it was concluded that the appellant has a lack of skills.
5. The appellant appealed against the decision of the Secretary of State and his appeal was dismissed by Judge of the First-tier Tribunal Perry in a decision that was promulgated on 1 August 2014 following a hearing on 25 July 2014. Permission was granted by Judge of the First-tier Tribunal P J G White on 20 October 2014. Thus the matter came before me.

The Findings of the FtT

6. The findings of Judge of the First-tier Tribunal Perry read as follows:-
 32. Paragraph 245DD sets down the factors that the respondent may take into account in assessing the appellant's application for leave to remain as a Tier 1 (Entrepreneur). A relevant factor is the viability and credibility of the money referred to in Table 4 of Appendix A. The respondent was not satisfied that the money was genuinely available to the appellant until such time as the money is spent in the business. In his interview the appellant said that he owns £50,000. Reference was made at the hearing to £205,000. The appellant was asked questions, not unreasonably, about the source of the funds. He said that the mother transferred the money. The distribution to him was part of the joint family system. The family business was based on sales of clothes into the German market.
 33. However the absence of concrete information is apparent. The appellant needs to satisfy the respondent as to the source of his funds as stated above in this paragraph but there is no information about the family business or where it is located or evidence of ownership or evidence of distribution of funds. There is a reference to funds being sent by the mother but again no evidence to specify the mother's legal involvement in the handling of the funds or her entitlement to make a distribution or evidence of the terms on which the sums were credited to the appellant's account. There is no account from the appellant or his family or the

family's advisers about the "joint family system" – how it is structured and how there is a link between the funds and the distribution to the appellant.

34. In his bundle of documents submitted for the hearing the appellant has provided supporting material. He relies upon two letters from Bank Al Habib. The first is dated 18 September 2013. It states that the appellant has a sum of rupees – 33,008,456 – in cash deposit, equivalent according to the currency converter approached by the appellant or his bank to £194,235. There is no information as to how the sum came into the appellant's possession – the source of funds is not revealed. The Bank in the same letter states that the funds "are freely transferable and disposable in the UK". This may well be the case but in the absence of information about the source of such funds they do not provide comfort that the funds are genuinely available to the appellant. There is no evidence that the appellant has saved such sums but more importantly having regard to his reference to his mother and the family system and joint family unit the appellant has failed to provide any documentary evidence to show a link between these matters and the funds in his account. Other than the two letters – which are almost identical in wording – and bank statements of the bank recording entries the appellant has produced no other information that inform how the appellant has come into ownership of such monies. I find that the appellant has failed to prove that the funds are genuinely available to him.
35. The circumstances of the appellant's loan of £50,000 to Mr Mubbshar raise further doubts about the intention of the appellant to invest the money referred to in Table 4. The respondent was not satisfied that the £50,000 of investment funds were genuinely available. The letter from Farani-Javid-Taylor says that the appellant has made £50,000 available to Mr Mubbshar to invest in the latter's business. The respondent concluded that the appellant did not have the funds available to invest in Unique Accountants Ltd. In evidence the appellant said that the advance was a loan but there was no evidence of the loan agreement. The loan, said the appellant, was a "formal arrangement" but there was no evidence of the "arrangement". He said that he had "the value of property in my own name" but produced no evidence of the same. He said he had earned £15,000 in interest but did not identify the receipt of the interest monies. He said he invested the interest earned "overseas" but again produced no documents to show any such overseas earnings. Taking these matters together I find that the £50,000 of investment funds are not genuinely available or that such funds meet the requirements of the Tier 1 Entrepreneur application.
36. The appellant has submitted a business plan for Unique Accountants Ltd. There are justifiable doubts about the originality of the appellant's

business plan. The appellant has not disputed that the website in the name of www.uniqueaccountants.org is exactly the same wording and design as the website of Hansen Linburg who are a bookkeeping company based in Romford. Such plagiarism undermines the credibility of the appellant's claim to have in place an independent and considered business plan. The respondent correctly drew attention to the market research the appellant says he undertaken. There are two significant weaknesses; first the appellant fails to make a case to support his contention that he will be able to compete successfully with the 150 competitor businesses that he has identified. Second the appellant said in evidence that he had just one client - KWA Trading for whom he does bookkeeping work. The appellant said that he faced an ethical dilemma which restricted his number of clients. He said he was not able to approach new clients until his long term situation was resolved but the appellants work was in providing routine tax calculations and bookkeeping work. There was no evidence that the appellant was offered a number of long term assignments that came into conflict with the unresolved visa issues which justified a decision not to proceed. Having regard to the plagiarism of his business plan and the unsatisfactory explanation for the lack of progress in developing his business I find that the appellant has not produced a viable or credible business plan.

37. Taking these matters together I find that the appellant has not satisfactorily demonstrated that he is a genuine entrepreneur s set out in paragraph 245DD(h) nor has he met the requirements set down in paragraph 245DD(i)."

The Grounds Seeking Leave to Appeal and Oral Submissions

7. The grounds seeking leave to appeal assert that the Judge did not understand that the appellant had the requisite funds despite making £50,000 available to Mr Mubbshar. The Judge was factually wrong when he referred to the appellant earning £15,000 interest on the loan to Mr Mubbshar. The interest referred to by the appellant was interest in his savings deposit account. The Judge referred to the family business in Pakistan but in fact it is located in Germany. The Judge did not accept that the funds were inherited but the appellant is able to produce an affidavit establishing this. The Judge did not consider the letter from the business consultant who drafted the business plan and assisted with the market research. It is asserted the Judge failed to consider Article 8 of the 1950 Convention on Human Rights.
8. In oral submissions Ms Kansal relied on her skeleton argument. The thrust of her argument is that the Judge was wrong in requiring that the appellant needed to satisfy the respondent as to the source of the funds. The appellant had the funds in his own account and that was sufficient. The Judge approached the genuine test erroneously because he considered it mandatory that there was evidence of the

source of funds prior to making an assessment under 245DD. The factors listed at (i)(i)-(vii) are to be considered together and not individually. Therefore the Judge in making a credibility assessment should have also considered the appellant's level of education, his immigration history, that the business has already been set up and the additional evidence in the bundle such as that from the appellant's mother.

9. The interpretation of the word "source" at 245DD (i)(ii) does not mean that the appellant must provide a lengthy paper trail of the money which he intends to use. The nature of the factors in (i) are to assist with the assessment under (h). In the appellant's case the evidence was always that the money was coming from his bank account in Pakistan which was held in his name. The decision maker is not obliged to look any further than this and to do so places an unduly harsh burden on an appellant.
10. Ms Kansal referred to the case of **Akinci (paragraph 21 HC 510 - correct approach) [2012] UKUT 00266 (IAC)** in relation to the business plan submitted by the appellant.
11. It was conceded by Ms Kansal that there was before the First-tier Tribunal no evidence from the appellant's mother as contrary to assertions made in her skeleton argument. An affidavit from the appellant's mother has now been obtained, but this was not before the First-tier Tribunal or the decision maker.
12. Ms Kansal referred me to the policy guidance at paragraph 35 (Tier 1 (Entrepreneur) policy guidance version 11/2014).
13. Mr Walker made submissions in the context of the response under Rule 24 of the 2008 Procedure Rules. He referred me to paragraph 34 of the determination and the appellant's interview (specifically question 17 and the appellant's answer). Ms Kansal responded and referred me to the interview in its entirety and specifically questions 17 and 20 and the appellant's answers.

The Immigration Rules

14. Paragraph 245DD contains the requirements for leave to remain as a Tier 1 (Entrepreneur) Migrant and the relevant limbs of paragraph 245DD in this case are (h) - (j) and they read as follows

“(h) Except where the applicant has, or was last granted, leave as a Tier 1 (Entrepreneur) Migrant, a Businessperson or an Innovator and is being assessed under Table 5 of Appendix A, the Secretary of State must be satisfied that:

- (i) the applicant genuinely:

- (1) intends and is able to establish, take over or become a director of one or more businesses in the UK within the next six months, or
 - (2) has established, taken over or become a director of one or more businesses in the UK and continues to operate that business or businesses; and
- (ii) the applicant genuinely intends to invest the money referred to in Table 4 of Appendix A in the business or businesses referred to in (i);
 - (iii) the money referred to in Table 4 of Appendix A is genuinely available to the applicant, and will remain available to him until such time as it is spent for the purposes of his business or businesses.
 - (iv) that the applicant does not intend to make employment in the United Kingdom other than under the terms of paragraph 245DE.
- (i) In making the assessment in (h), the Secretary of State will assess the balance of probabilities. The Secretary of State may take into account the following factors:
 - (i) the evidence the applicant has submitted;
 - (ii) the viability and credibility of the source of the money referred to in Table 4 of Appendix A;
 - (iii) the viability and credibility of the applicant's business plans and market research into their chosen business sector.
 - (iv) the applicant's previous educational and business experience (or lack thereof);
 - (v) the applicant's immigration history and previous activity in the UK;
 - (vii) where the applicant has already registered in the UK as self-employed or as the director of a business, and the nature of the business requires mandatory accreditation, registration and/or insurance, whether that accreditation, registration and/or insurance has been obtained: and
 - (viii) any other relevant information.
 - (j) The Secretary of State reserves the right to request additional information and evidence to support the assessment in (h), and to refuse the application if the information or evidence is not provided. Any requested

documents must be received by the Secretary of State at the address specified in the request within 28 calendar days of the date of the request.”

Conclusions

15. The appellant was interviewed by the Secretary of State on 11 February 2014 and at question 17 he was asked about the funding of his business and where he got the funds to invest. His answer was “my own money £50,000, being all my funds”.
16. At question 20 he was asked whether the funds are held in a bank account in the UK or overseas and his answer is as follows:-

“Overseas account, that’s my own account and it’s a savings account so didn’t invest as whilst its over there its still earning money as I did not know how long I needed to wait. Once I get my visa ill bring it over.”

17. The Secretary of State in the decision letter states as follows:

“You have submitted a personal bank account in the name of Mr Shahid Ali as evidence that you have funds of £50,000 to invest in your company.

When asked in your interview how you obtained the funding you replied that the money was from your own savings.

However after checking through your current bank account statements there is no evidence that you have saved any of the money as claimed.

According to your bank statements you receive a monthly salary of between £592 and £900 per month from your job with Compass who are a catering and cleaning company.

I do not find it credible that you would be able to save £50,000 of your own money whilst living and maintaining yourself in the UK.

You have submitted a personal bank account in the name of Mr Shahid Ali as evidence that you have funds of £50,000 to invest in your company.

However we have received an application for a Tier 1 (Entrepreneur) visa from Muhammad Mubbshar of [address] which is the same address as yourself, along with a third party letter signed by yourself and which also contains a copy of your passport.

The letter which has been verified by your solicitors Farani-Javid-Taylor as signed and valid states that you have made £50,000 available to Muhammad Mubbshar as a third party to invest in his business along with a copy of your bank statements which show your name and sort code and also the same balance as the ones that had been submitted with your application.

As you have made this funding available to your friend Muhammad Mubbshar to invest in his business this means that the funds listed on your bank account are not available to yourself to invest in Unique Accountants Ltd.

In view of the concerns I am not satisfied that £50,000 of investment funds are genuinely available or that you intend to invest them as it appeared that these funds have been made available on paper solely to meet the requirements of your Tier 1 (Entrepreneur) Visa application.”

18. In my view, the Judge understood the appellant’s case in relation to the funds and the loan to Mr Mubbshar. He recorded the appellant’s grounds of appeal at paragraph 22 of the determination. He understood that the appellant’s evidence was that he had funds available to invest in Mr Mubbshar’s business and in his own business. However, the Judge did not find that the appellant had established that the funds in his account were genuinely available to him and that he intended to invest the money in his business. The reason the Judge did not accept this is because he was not satisfied as to the provenance of the money held in the appellant’s bank account. He gave clear and detailed reasons at paragraphs 33 and 34.
19. The appellant was not asked questions in any detail during his interview about the provenance of the funds. However, from the answers he gave (specifically the answer to question 17) the decision maker was entitled to conclude that the appellant’s evidence was that he had saved the sum of money. In any event, it is clear from the Secretary of State’s decision that the provenance of the funds was an issue. From the answers given by the appellant during the interview and the evidence in relation to Mr Mubbshar’s application it was understandable that the Secretary of State concluded that the money was not available to the appellant and that the appellant did not genuinely intend to invest the money in his business. It was open to the Judge to find that this undermined the appellant’s credibility.
20. The Judge considered the evidence and he found the appellant to be lacking in credibility. There is no reason to believe that the Judge did not take into consideration the evidence in the round including all the factors listed at 245DD (i). He did not attach undue weight to the viability and credibility of the source of money (245DD (i) (ii)). The Judge understood that the appellant’s evidence was now that the money was not savings but from his family business and that the family business was based on sales of clothes into the German market (see [32]). He was entitled to conclude that there was no evidence in relation to the location of the business (see [33]). The Judge did not accept the evidence in relation to the family business wherever it was located. Whether the Judge erred in relation to £15,000 interest is immaterial.
21. The Judge did not require a paper trail. There is no reason to believe that he applied a too high standard of proof in this case. The findings must be considered in the context of the failure of the appellant to explain clearly during his interview the

provenance of the funds and his failure to provide cogent evidence of this. It is very clear from the Reasons for Refusal Letter that the provenance of the funds was a relevant issue and indeed it is an issue that the appellant sought, inadequately in my view, to address in his evidence and grounds of appeal. It was open to the Judge to conclude that the circumstances of the loan to Mr Mubbshar raised further doubts in relation to the appellant's credibility.

22. The decision in Akinci is not very helpful in this case. The problem in relation to the appellant's business plan is that it was according to the Secretary State "heavily based on the business plans found on a named website." The Judge concluded at [36] that there are "justifiable doubts about the originality of the appellant's business plan". The Judge found that the business plan was plagiarised and in my view this was a conclusion that was open to him on the evidence. The grounds assert that the Judge failed to take into consideration a letter from Alcove Investments Ltd and an invoice from a consultancy firm which assisted the appellant to prepare the business plan and business advisory services generally including marketing. Having read the determination as a whole in my view there is no reason to believe that the Judge did not take these documents into account. It is not necessary for the Judge to make findings on each and every piece of evidence. In any event any error in this regard is not material because the Judge makes a clear lawful and sustainable finding that the appellant has failed to establish that the funds are genuinely available to him.
23. I have considered whether the respondent should have considered asking for further evidence from the appellant about the provenance of the funds, but this has not been raised in the grounds seeking leave or the original grounds of appeal. In any event, from the interview the respondent was entitled to conclude that it was the appellant's case that he had saved the money not that he had inherited it from the family business (which was his evidence before the FtT). There is now an affidavit from the appellant's mother. This was not before the FtT. It is not particularly detailed and in and in the light of the evidence as a whole if I were to remake the decision and if the evidence was admissible, in the context of the evidence as a whole, in my view, it is not reliable.
24. The Judge did not make a finding in relation to Article 8 of the 1950 Convention on Human Rights. The grounds of appeal before the FtT make no reference to article 8. It does not appear that it was an issue raised by counsel at the hearing before the FtT. In any event, the appellant's evidence does not establish that he has a significant family or private life in the UK that would engage the Convention.
25. The decision to dismiss the appeal under the Immigration Rules is maintained. The appeal is dismissed under article 8.

Signed Joanna McWilliam

Date 30 November 2014

Deputy Upper Tribunal Judge McWilliam